

For Immediate Release

Contact: Pamela Coyle Brecht, Esquire (PCB@Pietragallo.com)
Marc S. Raspanti, Esquire (MSR@Pietragallo.com)
Micaela A. Famiglietti, Business Development Coordinator (MAF@Pietragallo.com)
Pietragallo Gordon Alfano Bosick & Raspanti, LLP
www.pietragallo.com

Groundbreaking \$30 Million Settlement in Whistleblower Lawsuit by North Carolina Emergency Physicians – First FCA Settlement Based on Lucrative Emergency Department Contracts as Inducements in Kickback Scheme



Thomas L. Mason, MD, FACEP



Steven G. Folstad, MD, FACEP



CHARLOTTE, NC, December 19, 2017 – The United States Department of Justice today announced that EMCARE will pay more than \$30 million (\$29.8 million plus accruing interest) to the Federal Government and six states to settle a whistleblower lawsuit filed by Drs. Mason and Folstad, and their practice, Mid-Atlantic Emergency Medical Associates, PA (“MEMA”). EMCARE was also required to enter into a comprehensive Corporate Integrity Agreement with the Office of Inspector General of the Department of Health and Human Services. A copy of the Settlement Agreement, Corporate Integrity Agreement and related documents are available on the Department of Justice’s website.

Three whistleblowers, Thomas L. Mason, M.D., Steven G. Folstad, M.D. and their well-regarded emergency medical group, MEMA, are the first to prevail in a qui tam case alleging a national, corporate scheme to use emergency department (“ED”) contracts as inducements in violation of the Anti-Kickback Statute (“AKS”). In this ground-breaking case, filed under the Federal False Claims Act (“FCA”) and a number of State FCAs in September 2010, Drs. Folstad and Mason and MEMA exposed for the Government a scheme by Health Management Associates, Inc.

(“HMA”)¹ and Emergency Medical Services Corporation (“EMCARE”),² to cheat the federal and state healthcare programs, including Medicare and Medicaid, for years by:

- **ADMITTING EMERGENCY ROOM PATIENTS TO HMA HOSPITALS AND SUBJECTING PATIENTS TO EXPENSIVE DIAGNOSTIC TESTS WHEN IT WAS NOT MEDICALLY NECESSARY TO DO SO; AND**
- **VIOLATING THE FEDERAL AKS BY:**
 - **AWARDING NEW EXCLUSIVE EMERGENCY SERVICES CONTRACTS AND/OR MAINTAINING EXISTING CONTRACTS AS INDUCEMENTS; and**
 - **PAYING KICKBACKS TO EMERGENCY ROOM PHYSICIANS TO INCENTIVIZE THEM TO ORDER EXPENSIVE EMERGENCY ROOM SERVICES AND TO ADMIT PATIENTS INTO HMA HOSPITALS WHEN IT WAS NOT MEDICALLY NECESSARY TO DO SO.**

EMCARE Conspired with HMA in Its Nationwide AKS Fraud

This healthcare fraud settlement with EMCARE stems from the first-ever whistleblower case based on the defendants’ use of exclusive contracts to provide ED services as inducements in violation of the Federal AKS and state corollaries. Typically, hospitals do not employ emergency doctors and mid-level providers (MLPs) who treat patients who come to the ED. Instead, hospitals enter into exclusive ED contracts with emergency medical groups. They outsource emergency room services to private companies like EMCARE. Under these exclusive emergency services contracts with hospitals, the physicians and MLPs in the group are obligated to care for all patients who arrive at the ED for treatment. Because the contract grants the emergency medicine group “exclusive” right to treat ED patients, other physicians who are not members of the emergency group are not permitted to treat patients in the ED. EMCARE is one of the largest corporations in the country that contracts with hospitals for exclusive ED contracts. MEMA is one of the few remaining independent emergency medicine groups providing such care.

An exclusive contract to provide emergency medical care in a hospital ED setting involves a guaranteed stream of patient referrals to the ED provider, many of whom are government healthcare program beneficiaries. Federal AKS and its State counterparts prohibit EMCARE and HMA from paying directly or indirectly anything of value for referrals. Emergency providers, like all physicians, must recommend inpatient care based on what is medically necessary for the specific ED patient, not EMCARE’s bottom line.

The Whistleblowers allege that, after gaining a coveted national preferred provider contract with HMA in 2008, EMCARE adopted a corporate strategy to meet or exceed HMA’s expectations related to unnecessary emergency room care and hospital admissions. This was done in order to gain or maintain exclusive and lucrative ED and hospitalist contracts.

¹ HMA merged with another for-profit hospital chain Community Health Systems (CHS) in early 2014. CHS is traded on the New York Stock Exchange (NYSE): CYH.

² EMCARE was, until December 2016, a for-profit corporation owned by Envision Healthcare Holdings, Inc. (NYSE: EHH). On December 1, 2016, as a result of a merger, EMCARE’s parent, EHH, became Envision Healthcare Corporation (“ENVISION”). It is traded on the New York Stock Exchange (NYSE): EVHC. In 2016, net revenues were several billion dollars.

They further allege that EMCARE executives and managers, as part of this corporate strategy, pressured ED physicians to recommend patients for admission to HMA hospitals without regard to medical necessity. The illegal remuneration offered to and accepted by EMCARE, as described in the Whistleblowers' complaint, included:

- **PAYMENTS RECEIVED BY EMCARE UNDER NEW AND RENEWED ED AND HOSPITALIST CONTRACTS WITH HMA; AND**
- **BONUS PAYMENTS MADE TO ED PHYSICIANS THAT WERE TIED, IN PART, TO MEETING HMA TARGETS FOR ED PATIENT ADMISSIONS.**

Drs. Mason and Folstad and MEMA stood up for their patients in the face of HMA's and EMCARE's profit-centered corporate control over the ED and exposed this significant fraud to the Government. Then, they paid the price for their principled stance. HMA corporate leaders responded with escalating retributions against the whistleblowers. HMA abruptly terminated MEMA's long-standing emergency services contracts at Lake Norman Regional Medical Center and Davis Regional Medical Center, both in suburban Charlotte, and the only hospital EDs in HMA's Division I that, at that time, were not staffed by EMCARE. HMA then awarded exclusive contracts for Lake Norman ED care, and hospitalist services to EMCARE. The Whistleblowers brought this lawsuit, exposing the conspiracy to use ED contracts as a financial inducement to EMCARE to refer patients to HMA for lucrative hospital services.

The FCA allows private citizens to file whistleblower or "qui tam" lawsuits against any person (including corporations) engaged in fraud against the Government. The Government did not file a separate complaint, but joined ("intervened") in the Mason, Folstad and MEMA case in January of 2014. When the Government makes a recovery, a whistleblower is entitled by statute to a relator's share of 15 to 25 percent of the Government's recovery when, as here, the Government has intervened in the case. The Whistleblowers in this case are to receive a 21% relator's share from the federal recovery for their longstanding efforts and a 25% share of the combined recoveries by States with qui tam statutes.

FIGHTING FRAUD AT THE HOSPITAL'S FRONT DOOR – THE EMERGENCY DEPARTMENT

"This is a creative, well-orchestrated fraud on American taxpayers, that subjected some patients to unnecessary and expensive hospital admissions at a time when most people seek to avoid hospitalizations," said Marc S. Raspanti, of Pietragallo Gordon Alfano Bosick & Raspanti, LLP.

"Dr. Mason, Dr. Folstad, and MEMA have, at great personal, financial, and professional expense, stood up to and exposed EMCARE and HMA's national, profit-driven scheme."

"Our clients risked much to expose to the Government the coordinated efforts of a national hospital system and one of the largest providers of emergency medical services in the country to put their financial interests above the medical needs of vulnerable patients, particularly the elderly and children," said Pamela Coyle Brecht, a partner with Pietragallo Gordon Alfano Bosick & Raspanti, LLP, who has worked on this case since 2010, actively supporting the Government's multi-tiered investigation. "Out of concern for their patients, and to preserve the sanctity of their professional judgment, Dr. Mason, Dr. Folstad, and their emergency group fought back against the concerted efforts of two industry for-profit giants, HMA and EMCARE. This should be a wakeup call that the Emergency Room will not be the front door to hospital fraud," Brecht said.

“It has been rewarding to represent clients who have so much integrity and stood up, in the face of constant pressure, and continued to do the right thing for their patients,” said James F. Wyatt, III, the Whistleblowers’ Charlotte-based counsel.

Michael Morse, a partner with Pietragallo Gordon Alfano Bosick & Raspanti, LLP, hopes that “the precedent set by this important case will stop future schemes of this nature.”

Mid-Atlantic Emergency Medical Associates, PA (MEMA)

MEMA is a large independent physician-owned practice providing high quality emergency and acute medical care throughout greater Charlotte and the Piedmont area of North Carolina. It was founded in 1976 and is based in downtown Charlotte. From July 1, 1996, until November 3, 2010, MEMA was the exclusive provider of ED physician services at HMA’s Lake Norman Regional Medical Center. From October 2000 until September 1, 2010, MEMA also was the exclusive provider of ED physician services at HMA’s Davis Regional Medical Center.

Thomas L. Mason, MD, FACEP

Dr. Thomas Mason is board-certified in emergency medicine and is a current and former member of many local and national professional scientific societies. He is a Fellow of the American College of Emergency Physicians (“ACEP”); he serves as a Councillor for ACEP, and as an Oral Board Examiner for the American Board of Emergency Medicine. From 1997 to November 2010, Dr. Mason served as the Medical Director of the Emergency Department at HMA’s Lake Norman Regional Medical Center, located in Mooresville, North Carolina. During his tenure at Lake Norman, Dr. Mason also served on the hospital Medical Executive Committee for 13 years and was elected Chief of Staff from 2006 to 2008. Dr. Mason was elected President of the North Carolina College of Emergency Physicians (“NCCEP”) in 2000 and has served on the NCCEP Board of Directors since 1994. In 2006, during his time as HMA’s ED Director at Lake Norman Medical Center, Dr. Mason was named Emergency Physician of the year by the NCCEP.

Steven G. Folstad, MD, FACEP

Dr. Steven Folstad is board-certified in emergency medicine and is also a Fellow of the American College of Emergency Physicians (“ACEP”). Dr. Folstad is a current and former member of many local and national professional scientific societies. Dr. Folstad has served on the faculty of the Department of Emergency Medicine, Wake Forest University Bowman Gray School of Medicine, in Winston-Salem, North Carolina and as the Residency Program Director. He is presently a Fellow of NCCEP. Until 2016, Dr. Folstad also served as the Medical Director, Iredell County EMS. From 2000 until 2008, Dr. Folstad served as Medical Director of the Emergency Department at HMA’s Davis Regional Medical Center, located in Statesville, North Carolina. From 2008 to 2013, Dr. Folstad served as President and Chief Executive Officer of MEMA.

Drs. Mason and Folstad thank their partners at MEMA and their families for their support, patience, and encouragement over more than seven years that this case has been pending. Dr. Mason, Dr. Folstad, and MEMA first endeavored to do the right thing under mounting and unrelenting pressure from HMA to cooperate with HMA’s fraudulent conduct by refusing to fraudulently recommend patients for admission to HMA hospitals. When they were terminated in retaliation for their resistance, they worked for more than seven years, through the filing and

participation in this qui tam lawsuit, to expose EMCARE's and HMA's conspiracy to maximize profits through fraud.

EMCARE

As of 2014, EMCARE had more than 500 contracts at hospitals throughout the United States to provide physician practice management services in hospital EDs, as well as hospitalist and radiology staffing, billing, and other administrative services. Since 2008, under a nationwide agreement with HMA, EMCARE staffed the emergency departments at more than 28 HMA facilities across the country. Some of these contracts also included EMCARE hospitalist services. EMCARE'S parent, ENVISION, reported net revenue of \$1.99 billion for the first 9 months of 2017.

Whistleblowers' Counsel

The plaintiffs are represented by Marc S. Raspanti, Pamela Coyle Brecht, and Michael A. Morse of the Pennsylvania law firm, Pietragallo Gordon Alfano Bosick & Raspanti, LLP; and James F. Wyatt, III and Robert Blake of the Charlotte, North Carolina law firm Wyatt & Blake, LLP. This settlement also covers a separate qui tam lawsuit filed almost a year later by former EMCARE and HMA employees who made similar allegations as Dr. Mason, Dr. Folstad, and MEMA. The \$29.8 million settlement between the Government and EMCARE was made without any determination or admission of liability. The Government did not file a separate Complaint in Intervention but joined in the Whistleblowers' complaint.

Pietragallo Gordon Alfano Bosick & Raspanti, LLP, is one of the largest and most successful whistleblower law firms in the United States. Lawyers in the nationwide whistleblower practice group of Pietragallo Gordon Alfano Bosick & Raspanti have served for more than 27 years as lead counsel in qui tam cases that have recovered over \$2 billion for federal and state taxpayers. Pietragallo Gordon Alfano Bosick & Raspanti, LLP, pursued this case with co-counsel, James F. Wyatt, III and Robert Blake, of Wyatt & Blake, LLP, on behalf of the American taxpayers.

The Prosecution Team

After this case was filed under seal in 2010, the matter was actively investigated by the United States Department of Justice ("DOJ"), the United States Attorney's Office for the Western District of North Carolina, the United States Department of Health & Human Services - Office of the Inspector General ("HHS-OIG"), the Federal Bureau of Investigation ("FBI"), and the North Carolina Attorney General. In 2014, the case was unsealed and United States intervened in the Whistleblowers' allegations against EMCARE, namely, that as a result of EMCARE's conduct, HMA submitted false claims for unnecessary inpatient admissions related to violations of the AKS.

Dr. Mason, Dr. Folstad, MEMA, and their legal team, also express their appreciation for the hard work by Government lawyers and investigators which resulted in the recovery of millions of dollars for federal and state taxpayers. In particular, they thank Laurie Oberembt and Marie Bonkowski, Senior Trial Counsel with the Civil Division, U.S. DOJ; R. Andrew Murray, U.S. Attorney; Gill Beck, Civil Chief, U.S. Attorney's Office; Jonathan Ferry, Assistant US Attorney; F. Edward Kirby, Jr., Special Deputy Attorney General, North Carolina DOJ; and Special Agent Stephanie L. Cheek, HSS-OIG for their support and outstanding work on this case over the years.

The lawsuit is captioned *United States et. al. ex rel. Mason, Folstad and MEMA v. Health Management Associates, Inc., et. al.*, No. 3:10CV472 (W.D.N.C.). The matter is assigned to the Honorable Graham C. Mullen. The plaintiffs' private causes of action, which are still pending against HMA and EMCARE, will be litigated in U.S. District Court for the Western District of North Carolina.

A copy of the unsealed False Claims Act Complaint can be found at www.FalseClaimsAct.com.

Pietragallo Gordon Alfano Bosick & Raspanti, LLP is a regional litigation and business law firm with a national client base. In addition to its Pittsburgh and Philadelphia offices, the firm has offices in Sharon, Pennsylvania; Steubenville, Ohio; and Weirton, West Virginia. For more information, visit our website at www.PIETRAGALLO.com.

###